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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,243	07/15/2003	Claude Tihon	20000018.REI	1279
23595	7590	08/08/2005		
NIKOLAI & MERSEREAU, P.A. 900 SECOND AVENUE SOUTH SUITE 820 MINNEAPOLIS, MN 55402			EXAMINER BROWN, MICHAEL A	
			ART UNIT 3764	PAPER NUMBER

DATE MAILED: 08/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/621,243	Applicant(s) TIHON, CLAUDE	
	Examiner Michael Brown	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☐ Responsive to communication(s) filed on ____.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-14 is/are pending in the application.

 4a) Of the above claim(s) ____ is/are withdrawn from consideration.

5) ☐ Claim(s) ____ is/are allowed.

6) ☒ Claim(s) 1-14 is/are rejected.

7) ☐ Claim(s) ____ is/are objected to.

8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:

 1. ☐ Certified copies of the priority documents have been received.

 2. ☐ Certified copies of the priority documents have been received in Application No. ____.

 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date ____	6) <input type="checkbox"/> Other: ____

U.S. Patent and Trademark Office
PTOL-326 (Rev. 1-04)

Office Action Summary

Part of Paper No./Mail Date 20050728

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 1-14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support in the specification for the retention structure forming a closed loop defining a plane that is generally lateral to the longitudinal axis of the flexible shaft. This structural limitation (the closed loop defining a plane that is generally lateral to the longitudinal axis of the flexible shaft) is new matter.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2 and 4-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tihon '654 in view of Collins.

Tihon '654 discloses in figures 1-2 an incontinence prevention device comprising a flexible shaft 12, a retention structure 22 that is a loop that defines a plane that is generally lateral to the longitudinal axis of the flexible shaft (fig. 1), the longitudinal axis is offset (fig. 1), a lumen 18, markings (the channel 20 at the proximal

Art Unit: 3764

end 14, provides marking) at the proximal end 14, a beveled edge (the edge of 20 at 14) at the proximal end, a protuberance (the distal end 16 is being interpreted as a protuberance), the protuberance projects from a mid point of the loop (the protuberance projects from the mid point of the loop, fig. 1), the lumen is coextensive with the shaft and the protuberance (fig. 1) and extends through the distal end of the protuberance (the lumen extends through 16), a segment of the retention structure includes a cavity (the opening between the outer circumference of 22) and a method of treating incontinence. However, Tihon '654 doesn't disclose the loop being completely closed. Collins teaches in figure 1-2 an incontinence device comprising a closed loop (fig. 2). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the loop disclosed by Tihon '654 could be fabricated as a completely closed loop as taught by Collins because the closed or semi-closed loop could be used to press against the vagina.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Levius.

Levius teaches in figure 1 an incontinence device comprising a hydrogel coating (col. 2, lines 47-50). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the hydrogel coating as taught by Levius could be fabricated onto the incontinence device disclosed by Tihon '654 and taught by Collins in order make the device slippery and easy to place inside of the urethra.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Beliveau discloses an incontinence device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 571-272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gergory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Brown
July 28, 2005



MICHAEL A. BROWN
PRIMARY EXAMINER